



April 7, 2000

Ms. Linda R. Frank
Assistant City Attorney
City of Arlington
200 West Abram Street, Box 231
Arlington, Texas 76004-0231

OR2000-1383

Dear Ms. Frank:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 134412.

The City of Arlington (the "city") received a written request for various law enforcement records from an individual who received a traffic citation. Specifically, the requestor seeks personnel information about the police officer who issued the citation, various other traffic citations issued by the city, documentation of traffic accidents that have occurred at a particular location, and information documenting "any property owner approval of the Arlington Police Department setting up radar stations on private property." You contend the requested records are excepted from required public disclosure pursuant to, *inter alia*, section 552.103 of the Government Code.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). You inform this office that charges for the traffic offense which gave rise to the current records request are now pending in Arlington Municipal Court.

We conclude that in this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103. In fact, the

requestor himself states that he is requesting the records at issue “to defend myself against citation No. OC7003.” Because you have met your burden of establishing that the requested records relate to litigation to which the city is a party, we conclude that the city may withhold the requested records pursuant to section 552.103 of the Government Code.¹

In reaching this conclusion, however, we assume that the defendant to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the defendant in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from him pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one

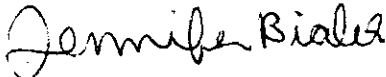
¹Because we resolve your request under section 552.103, we need not address the applicability of the other exceptions you raised.

of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/RWP/ch

Ref.: ID# 134412

Encl. Submitted documents

cc: Mr. Jim Wagnon
616 Six Flags Drive, Suite 400
Arlington, Texas 76011
(w/o enclosures)